

[53 & 54 VICT.]

*Forfar and Brechin Railway
Act, 1890.*

[Ch. clxvi.]



CHAPTER clxvi.

An Act to incorporate the Forfar and Brechin Railway Company and to empower them to construct Railways in the county of Forfar and for other purposes.

A.D. 1890.

[4th August 1890.]

WHEREAS the construction of a line of railway from Forfar to Brechin in the county of Forfar herein-after described would be of public and local advantage :

And whereas the several persons herein-after named with others are willing to carry the undertaking into execution on being incorporated into a Company for the purpose :

And whereas it is expedient that the Company and the Caledonian Railway Company be empowered to enter into and carry into effect working and other agreements as herein-after provided :

And whereas plans and sections showing the lines and levels of the railways authorised by this Act and also a book of reference to such plans containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands required or which may be taken for the purposes or under the powers of this Act were duly deposited with the principal sheriff clerk for the county of Forfar and are herein-after referred to respectively as the deposited plans sections and book of reference :

And whereas the purposes of this Act cannot be effected without the authority of Parliament :

May it therefore please Your Majesty that it may be enacted and be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows :—

1. This Act may be cited as the Forfar and Brechin Railway Short title. Act 1890.

[Price 1s. 6d.]

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Incorporation of
general Acts.

2. The Companies Clauses Consolidation (Scotland) Act 1845 Part I. (relating to cancellation and surrender of shares) and Part III. (relating to debenture stock) of the Companies Clauses Act 1863 as amended by the Companies Clauses Act 1869 the Lands Clauses Acts the Railways Clauses Consolidation (Scotland) Act 1845 and Part I. (relating to construction of a railway) and Part III. (relating to working agreements) of the Railways Clauses Act 1863 are (except where expressly varied by this Act) incorporated with and form part of this Act.

Interpretation.

3. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith have the same respective meanings unless there be something in the subject or context repugnant to such construction. The expression "the Company" means the Company incorporated by this Act the expressions "the railways" and "the undertaking" mean respectively the railways and works connected therewith and the undertaking authorised by this Act.

Company incorporated.

4. John Grant Kinloch of Logie John Adamson of Careston Fitzroy Charles Fletcher of Fearn and Letham Grange James Guthrie James Cameron James Guild and all other persons and corporations who have already subscribed to or shall hereafter become proprietors in the undertaking and their executors administrators successors and assigns respectively shall be and are hereby united into a Company for the purpose of making and maintaining the railways and for other the purposes of this Act and for those purposes shall be and are hereby incorporated by the name of "the Forfar and Brechin Railway Company" and by that name shall be a body corporate with perpetual succession and a common seal and with power to purchase take hold, and dispose of lands and other property for the purposes of this Act.

Power to
make rail-
ways.

5. Subject to the provisions of this Act the Company may make and maintain in the lines and according to the levels shown on the deposited plans and sections the railways herein-after described together with all proper stations junctions sidings roads approaches bridges buildings works and conveniences connected therewith and may enter upon take and use such of the lands delineated on the said plans and described in the deposited book of reference as may be required for that purpose. The railways herein-before referred to and authorised by this Act are—

A. Railway (No. 1) thirteen miles and seventy yards or thereabouts in length commencing in the parish of Forfar at a point three hundred yards or thereabouts measured in a northerly

direction from the centre of the bridge which carries the public road from Forfar to Kirriemuir over the Caledonian Railway Company's main line between Perth and Forfar and terminating in the parish of Brechin at a point near and on the west side of the road from Brechin to Edzell one hundred and eighty-five yards or thereabouts measured in a northerly direction from the corner of the house in Trinity Road situated at the intersection of Trinity Road and Gallowshill.

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A Railway (No. 2) one mile one furlong and eighty yards or thereabouts in length wholly situate in the parish of Brechin commencing at the point before described as the termination of Railway No. 1 and terminating at a point on the Caledonian Railway Company's branch line from Brechin to Bridge of Dun four hundred and fifty-one yards or thereabouts measured in an easterly direction along that railway from the centre of the bridge which carries that railway over the public road running northwards from the east corner of Montrose Street Brechin to Drumachlie farmhouse.

A Railway (No. 3) five furlongs and ten yards or thereabouts in length wholly situate in the parish of Forfar commencing in the parish of Forfar at a point forty yards or thereabouts measured in a north-westerly direction from the centre of Zoar Bridge which carries the public road from Forfar to Brechin over the Caledonian Railway Company's main line between Perth and Forfar and terminating at the intended point of commencement of Railway No. 1.

A Railway (No. 4) two furlongs and one hundred and eighty-four yards or thereabouts in length wholly situate in the parish of Forfar commencing in the parish of Forfar by a junction with the Caledonian Railway Company's main line between Perth and Forfar at a point thereon five hundred and thirty-nine yards or thereabouts measured along that railway in a westerly direction from the centre of Zoar Bridge aforesaid and terminating at the intended point of commencement of Railway No. 1.

6. The capital of the Company shall be one hundred and twenty thousand pounds in twelve thousand shares of ten pounds each. Capital.

7. The Company shall not issue any share created under the authority of this Act nor shall any such share vest in the person or corporation accepting the same unless and until a sum not being less than one fifth of the amount of such share is paid in respect thereof. Shares not to be issued until one fifth paid.

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Calls.

8. One fifth of the amount of a share shall be the greatest amount of a call and three months at least shall be the interval between successive calls and three fifths of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share.

Receipt in
case of
persons not
sui juris.

9. If any money is payable to a shareholder or mortgagee or debenture stockholder being a minor idiot or lunatic the receipt of the guardian or committee of his estate or of his tutor or curator or curator bonis shall be a sufficient discharge to the Company.

Power to
divideshares.

10. Subject to the provisions of this Act the Company with the authority of three fourths of the votes of the shareholders present in person or by proxy at a general meeting of the Company specially convened for the purpose may from time to time divide any share in their capital into half shares of which one shall be called "preferred half share" and the other shall be called "deferred half share" but the Company shall not divide any share under the authority of this Act unless and until not less than sixty per centum upon such share has been paid up and upon every such division fifty per centum upon the entire share shall be carried to the credit of the deferred half share (being the whole amount payable thereon) and the residue to the credit of the preferred half share.

Dividends on
half shares.

11. The dividend which would from time to time be payable on any divided share if the same had continued an entire share shall be applied in payment of dividends on the two half shares in manner following (that is to say) First in payment of dividend after such rate not exceeding six pounds per centum per annum as shall be determined once for all at a general meeting of the Company specially convened for the purpose on the amount for the time being paid up on the preferred half share and the remainder (if any) in payment of dividend on the deferred half share and the Company shall not pay any greater amount of dividend on the two half shares than would have from time to time been payable on the entire share if the same had not been divided.

Dividend on
preferred
shares to be
paid out of
profits of the
year only.

12. Each preferred half share shall be entitled out of the profits of each year to the dividend which may have been attached to it by the Company as aforesaid in priority to the deferred half share bearing the same number but if in any year ending the thirty-first day of December there shall not be profits available for the payment of the full amount of dividend on any preferred half share for that year no part of the deficiency shall be made good out of the profits of any subsequent year or out of any other funds of the Company.

13. Forthwith after the creation of any half shares the same shall be registered by the directors and each half share shall bear the same number as the number of the entire share certificate in respect of which it was issued and the directors shall issue certificates of the half shares accordingly and shall cause an entry to be made in the register of the entire shares of the conversion thereof but the directors shall not be bound to issue a certificate of any half share until the certificate of the existing entire share be delivered to them to be cancelled unless it be shown to their satisfaction that such certificate is destroyed or lost and on any certificate being so delivered up the directors shall cancel it.

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Half shares
to be regis-
tered and
certificates
issued.

14. The terms and conditions on which any preferred half share or deferred half share created under this Act is issued shall be stated on the certificate of each such half share.

Terms of
issue to be
stated on
certificates.

15. The provisions of the Companies Clauses Consolidation (Scotland) Act 1845 with respect to the forfeiture of shares for nonpayment of calls shall apply to all preferred half shares created under the authority of this Act and every such preferred half share shall for that purpose be considered an entire share distinct from the corresponding deferred half share and until any forfeited preferred half share shall be sold by the directors all dividends which would be payable thereon if the same had not been forfeited shall be applied in or towards payment of any expenses attending the declaration of forfeiture thereof and of the arrears of calls for the time being due thereon with interest.

Forfeiture
of preferred
half shares.

16. No preferred half share created under the authority of this Act shall be cancelled or be surrendered to the Company.

Preferred half
shares not to be
cancelled or
surrendered.

17. The several half shares under this Act shall be half shares in the capital of the Company and every two half shares (whether preferred or deferred or one of each) held by the same person shall confer such right of voting at meetings of the Company and (subject to the provisions herein-before contained) shall confer and have all such other rights qualifications privileges liabilities and incidents as attach and are incident to an entire share.

Half shares
to be half
shares in
capital.

18. The Company may from time to time borrow on mortgage of the undertaking any sum not exceeding in the whole forty thousand pounds but no part thereof shall be borrowed until the whole capital of one hundred and twenty thousand pounds is issued and accepted and one half thereof is paid up and the Company have proved to the sheriff who is to certify under the forty-second section of the Companies Clauses Consolidation (Scotland) Act 1845 before

Power to
borrow.

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For appointment of a judicial factor.

19. The mortgagees of the undertaking may enforce payment of arrears of interest or principal or principal and interest due on their mortgages by the appointment of a judicial factor In order to authorise the appointment of a judicial factor in respect of arrears of principal the amount owing to the mortgagees by whom the application for a judicial factor is made shall not be less than five thousand pounds in the whole.

Debenture stock.

20. The Company may create and issue debenture stock subject to the provisions of Part III. of the Companies Clauses Act 1863 but notwithstanding anything therein contained the interest of all debenture stock and of all mortgages at any time created and issued or granted by the Company under this or any subsequent Act shall subject to the provisions of any subsequent Act rank pari passu (without respect to the dates of the securities or of the Acts of Parliament or resolutions by which the stock and mortgages were authorised) and shall have priority over all principal moneys secured by such mortgages and notice of the effect of this enactment shall be endorsed on all mortgages and certificates of debenture stock issued by the Company.

Application of moneys.

21. All moneys raised under this Act whether by shares debenture stock or borrowing shall be applied only to the purposes of this Act to which capital is properly applicable.

First ordinary meeting

22. The first ordinary meeting of the Company shall be held within six months after the passing of this Act and the subsequent ordinary meetings of the Company shall be held twice in every year in the months of March or April and September or October and all meetings of the Company whether ordinary or extraordinary shall be held in Edinburgh or in such other place as the directors may from time to time appoint.

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23. The number of directors shall be five but the Company may from time to time alter the number provided the number be not less than three nor more than five.

Number of directors.

24. The qualification of a director shall be the possession in his own right of not less than thirty shares.

Qualification of directors.

25. The quorum of a meeting of directors shall be three.

Quorum.

26. John Grant Kinloch of Logie Fitzroy Charles Fletcher of Fearn and Letham Grange John Adamson of Careston and two persons to be nominated by them or the majority of them and consenting to such nomination shall be the first directors of the Company and shall continue in office until the first ordinary meeting held after the passing of this Act. At that meeting the shareholders present in person or by proxy may either continue in office the directors appointed by this Act or nominated as aforesaid or any of them or may elect a new body of directors or directors to supply the place of those not continued in office the directors appointed by this Act or nominated as aforesaid being (if they continue qualified) eligible for re-election and at the ordinary meeting to be held in every year after the first ordinary meeting the shareholders present in person or by proxy shall (subject to the power herein-before contained for altering the number of directors) elect persons to supply the places of the directors then retiring from office agreeably to the provisions of the Companies Clauses Consolidation (Scotland) Act 1845 and the several persons elected at any such meeting being neither removed nor disqualified nor having died or resigned shall continue to be directors until others are elected in their stead in manner provided by the same Act.

First directors.

27. The quantity of land to be taken by the Company by agreement for the extraordinary purposes mentioned in the Railways Clauses Consolidation (Scotland) Act 1845 shall not exceed ten acres but nothing in this Act shall exempt the Company from any indictment action or other proceeding for nuisance in the event of any nuisance being caused by them upon any land taken under the powers of this section.

Lands for extraordinary purposes.

28. The powers of the Company for the compulsory purchase of lands for the purposes of this Act shall not be exercised after the expiration of three years from the passing of this Act.

Period for compulsory purchase of lands.

29. For the protection of George Watson Neish James Neish Charles Henry Laurence Neish and Edward William Neish their heirs and assigns trustees of the late William Neish or other the

For protection of the trustees of the late

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William
Neish.

owners for the time being of certain lands known as the Tannadice Estate in the parish of Tannadice and county of Forfar (all of whom are herein-after included in the expression "the trustees") the following provisions shall have effect and be carried into execution subject to any alteration thereof which may be hereafter agreed upon between the Company and trustees (that is to say):—

- (1) The Company shall make and maintain a station for passengers animals and goods on Railway No. 1 in or as near as conveniently may be to the field numbered 48 in the parish of Tannadice on the deposited plans to be called Tannadice Station.
- (2) The Company shall to the reasonable satisfaction of the trustees soil and plant and for ever keep planted with laurel or as may otherwise be agreed upon both sides of the embankments of Railway No. 1 between the points measured 4 miles 5 furlongs and 7 chains and 6 miles 3 furlongs and 3 chains along the centre of that railway from its commencement on the deposited plans and shall also plant and maintain a good and sufficient thorn hedge on both sides of Railway No. 1 where the same passes through the trustees lands.
- (3) During the construction of Railway No. 1 through the trustees lands the trustees may if they see fit employ a game watcher for the protection of the game upon their adjacent lands and the Company shall on demand pay to the trustees the reasonable wages of such game watcher not exceeding eighteen shillings a week.

For the pro-
tection of
the estate of
Findowrie.

30. For the protection of Helen Carnegy Arbuthnott of Findowrie and her successors in the said lands and estate (who are herein-after in this section called "the owner") the following provisions shall have effect and shall be carried into execution subject to any alterations thereof which may hereafter be agreed upon between the Company and the owner (that is to say):—

- (1) The Company shall so construct Railway No. 1 and works connected therewith as not to injure or interrupt or in any way affect the supply of water to the dam and farm steading of Findowrie and the Company shall construct to the reasonable satisfaction of James Ritchie civil engineer Perth or the owner and shall in all time thereafter maintain in good repair all such culverts drains and watercourses or other works as may be necessary to secure the said water supply and the Company shall be bound to make compensation to the owner and to the tenants of the owner for all loss and damage which may arise from such water supply being injuriously affected

Provided always that the Company shall not be liable for any damage which may result to the said water supply from causes other than the construction and use of the said railway and works or the action or operations of the Company or of any person for whom the Company is responsible.

- (2) The Company shall carry the occupation road marked No. 8 in the parish of Brechin on the deposited plans across Railway No. 1 by means of a stone or iron bridge which the Company shall be bound to maintain in all time coming of not less than 14 feet clear width between the parapets thereof which parapets shall not be less than $3\frac{1}{2}$ feet high and the level of the surface of such roadway when altered shall not be more than 7 feet above the level of the existing road where it crosses the centre line of the railway and the inclination of the approach road on each side of the bridge shall not be of a steeper gradient than 1 in 20 and which bridge shall be constructed and maintained to the reasonable satisfaction of the said James Ritchie or the owner.
- (3) The Company shall simultaneously with the construction of Railway No. 1 make and construct at their own expense a good and substantial accommodation road properly metalled along the south side of the said Railway No. 1 from the point where the said railway crosses the road from Findowrie to Barrelwell marked No. 10 in the parish of Brechin on the deposited plans up to the proposed railway station to be constructed by the Company alongside the road No. 24 in the parish of Careston on the deposited plans. The said road shall be 18 feet in clear width and shall belong to and be maintained by the owner and be used by the owner and the owners tenants and shall be made drained and completed by the Company to the reasonable satisfaction of the said James Ritchie or the owner.
- (4) If any dispute shall arise between the Company and the owner or between the Company and the said James Ritchie with regard to any matter falling under this section such dispute shall be referred to Robert Carstairs Reid civil engineer Edinburgh whom failing to an arbiter to be appointed by the sheriff of the county of Forfar on the application either of the Company or of the owner and the decision of the said Robert Carstairs Reid or of such arbiter who may be so appointed shall be final.
- (5) All the costs of any reference or arbitration which may be incurred under the preceding sub-sections hereof with respect

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to the sufficiency of any works to be constructed as aforesaid shall be in the discretion of the arbiter.

- (6) Nothing in this section contained shall prejudice or affect in any way or alter the rights and claims competent to the owner or to tenants under the Lands Clauses Acts whether in respect of lands taken severance or in any other way whatsoever.

For the protection of the lands of Glencadam.

31. For protection of John Lamb of Glencadam in the county of Forfar and his successors in the said lands (who are herein-after in this section called "the owner") the following provisions shall have effect and shall be carried into execution subject to any alterations thereof which may hereafter be agreed upon between the Company and the owner (that is to say):—

- (1) In constructing Railway No. 2 the Company shall carry the same at that part thereof where the property of the Glencadam Distillery Company is nearest to Glencadam House as far south as to be wholly situate on the property of the Glencadam Distillery Company.
- (2) The Company shall acquire so much land as shall be necessary and shall plant thereon to the reasonable satisfaction of the owner and shall for ever maintain and keep planted a belt of trees 25 feet in width on the north side of and adjoining Railway No. 2 where it passes through the fields numbered 64 and 66 in the parish of Brechin on the deposited plans and in the event of the triangular piece of ground referred to in the immediately succeeding sub-section exceeding one acre and not being acquired by the Company as therein provided the Company shall acquire the land for and continue the said belt of trees along the north side of Railway No. 2 where it passes through the field numbered 67 in the said parish on the said plans.
- (3) The Company shall in the event of the triangular piece of ground to be cut off by the intersection of Railway No. 2 in passing through the field marked No. 67 in the parish of Brechin on the deposited plans not being of greater extent than one acre purchase and acquire the same.
- (4) The Company shall provide to the satisfaction of the owner at a place approved of by him an accommodation bridge for access to the fields numbered 67 and 71 in the parish of Brechin on the deposited plans over or across the foresaid triangular piece of ground and the railway line suitable for agricultural purposes.

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(5) The Company shall to the reasonable satisfaction of the owner construct and maintain such works as may be necessary to provide a supply of water for agricultural purposes to the portion on the south side of Railway No. 2 of the fields numbered 64 and 66 in the parish of Brechin on the deposited plans severed from the remainder thereof by the construction of that railway.

(6) The amount of the purchase money or compensation to the owner for any lands purchased or taken from him and the amount of the compensation for any permanent depreciation damage or injury to the remainder of his said lands on the footing of the said lands being feuing lands shall failing agreement between the owner and the Company be determined by arbitration in manner provided by the Lands Clauses Consolidation (Scotland) Act 1845 for the settlement of questions of disputed compensation and compensation shall also be paid for loss of amenity and severance damage.

32. In altering for the purposes of this Act the roads next herein-after mentioned the Company may make the same of any inclinations not steeper than the inclinations herein-after mentioned in connexion therewith respectively (that is to say) :—

Inclination
of roads.

Number on deposited Plans.	Parish.	Description of Road.	Intended Inclination.
Railway No. 1.			
15	Kirriemuir -	Public carriage road	1 in 20 on both sides
1	Oathlaw -	Occupation road -	1 in 16 on one side
40	Tannadice -	Public carriage road	1 in 18 on one side and 1 in 20 on the other
12	Fearn -	Public road -	1 in 10 on one side
1	Careston -		
8	Careston -	Public carriage road	1 in 17 on one side and level on the other
47	Brechin -	Occupation road -	1 in 15 on both sides
Railway No. 2.			
62	Brechin -	Public carriage road	1 in 25 on both sides
78	Brechin -	Public carriage road	1 in 16 on one side and 1 in 20 on the other

Provided always that if the county council for the county of Forfar or any committee of the council charged with the manage-

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ment of the roads within the parish of Brechin consent to a lateral deviation of the last-mentioned road the Company shall make the same of any inclination not steeper than 1 in 20 on both sides.

New portions of road to be subject to same provisions as existing roads.

33. All new portions of road authorised by the provisions of the Railways Clauses Consolidation (Scotland) Act 1845 incorporated with this Act to be formed in lieu of roads altered or diverted shall be subject to the provisions of section thirty-nine of that Act and shall be held as respects management and maintenance and in all other respects as parts of and be subject to the same provisions as the existing roads altered or diverted as aforesaid respectively.

Power to take easements &c. by agreement.

34. Persons empowered by the Lands Clauses Acts to sell and convey or release lands may if they think fit subject to the provisions of those Acts and of this Act grant to the Company any easement servitude right or privilege not being an easement of water required for the purposes of this Act in or over or affecting any such lands and the provisions of the said Acts with respect to lands and rentcharges ground annuals or feu duties so far as the same are applicable in this behalf shall extend and apply to such grants and to such easements servitudes rights and privileges as aforesaid respectively.

Restriction on taking houses of labouring class.

35. The Company shall not under the powers of this Act without the consent of the Secretary for Scotland purchase or acquire in any district within the meaning of the Public Health (Scotland) Act 1867 ten or more houses which after the passing of this Act have been or on the fifteenth day of December last were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers :

For the purposes of this section the expression "labouring class" includes mechanics artisans labourers and others working for wages hawkers costermongers persons not working for wages but working at some trade or handicraft without employing others except members of their own family and persons other than domestic servants whose income does not exceed an average of thirty shillings a week and the families of any such persons who may be residing with them.

Power to limited owners to take shares for land.

36. Subject to the provisions herein-after contained it shall be lawful for any limited owner named in the First Schedule to this Act of any lands shown on the deposited plans and described in the deposited book of reference required by the Company for the purposes of any part of their undertaking to agree with the Company that the consideration to be paid for the same and the

compensation (if any) to be paid for any permanent damage or injury to any such lands shall be wholly or in part the allotment to such limited owner of such number of shares in the capital of the Company as shall be agreed upon between such owner and the Company:—

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- (1.) For the purposes of this section the expression "limited owner" includes any person named in the said First Schedule and empowered under the seventh section of the Lands Clauses Consolidation (Scotland) Act 1845 to sell and convey or release lands or any estate or interest therein to the promoters of the undertaking;
- (2.) All shares issued pursuant to this section to any limited owner shall be deemed to be fully paid up shares in the capital of the Company and the names of the holders thereof shall be inserted as such in the register of shareholders;
- (3.) All shares issued pursuant to this section to any limited owner shall be held upon the like uses and trusts and for the same purposes and in the same manner as the lands in consideration for which such shares are issued stood settled immediately before the conveyance of such lands to the Company;
- (4.) The Company shall make an entry in their register of shareholders of the uses trusts and purposes aforesaid and subject to the uses trusts and purposes affecting such shares such limited owner in respect thereof shall have all the other rights and powers of a shareholder of the Company;
- (5.) The Company shall not be bound to see to the application of any dividend payable to a limited owner or be in any way responsible with respect to the application thereof.

37. It shall be lawful for any limited owner named in the First Schedule to this Act whose land the Company are authorised to take for the purposes of their undertaking to grant convey or dispose of the same or any portion thereof to the Company free of cost to the Company.

Power to limited owners to convey lands free of charge in certain cases.

38. Whereas pursuant to the standing orders of both Houses of Parliament and to an Act of the ninth year of the reign of Her present Majesty chapter twenty a sum of four thousand nine hundred and ninety-two pounds eight shillings and sixpence being equal to five per centum upon the amount of the estimate in respect of the railways has been deposited with the Queen's and Lord Treasurer's Remembrancer on behalf of the Court of Exchequer in Scotland in respect of the application to Parliament for this Act which sum is

Deposit.

A.D. 1890. — referred to in this Act as the deposit fund Be it enacted that notwithstanding anything contained in the said Act the deposit fund shall not be paid or transferred to or on the application of the person or persons or the majority of the persons named in the warrant or order issued in pursuance of the said Act or the survivors or survivor of them (which persons survivors or survivor are or is in this Act referred to as "the depositors") unless the Company shall previously to the expiration of the period limited by this Act for completion of the railways open the same for the public conveyance of passengers Provided that if within such period as aforesaid the Company open any portion of the railways for the public conveyance of passengers then on the production of a certificate of the Board of Trade specifying the length of the portion of the railways opened as aforesaid and the portion of the deposit fund which bears to the whole of the deposit fund the same proportion as the length of railway so opened bears to the entire length of the railways the Court shall on the application of the depositors or the majority of them order the portion of the deposit fund specified in the certificate to be paid or transferred to them or as they shall direct and the certificate of the Board of Trade shall be sufficient evidence of the facts therein certified and it shall not be necessary to produce any certificate of this Act having passed anything in the above-mentioned Act to the contrary notwithstanding.

Application
of deposit.

39. If the Company do not previously to the expiration of the period limited for the completion of the railways complete and open the same for the public conveyance of passengers then and in every such case the deposit fund or so much thereof as shall not have been paid to the depositors shall be applicable and after due notice in the "Edinburgh Gazette" shall be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement construction or abandonment of the railways or any portion thereof or who have been subject to injury or loss in consequence of the compulsory powers of taking property conferred upon the Company by this Act and for which injury or loss no compensation or inadequate compensation has been paid and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in such proportions as to the Court of Exchequer in Scotland may seem fit and if no such compensation is payable or if a portion of the deposit fund has been found sufficient to satisfy all just claims in respect of such compensation then the deposit fund or such portion thereof as may not be required as aforesaid shall either be forfeited to Her Majesty and accordingly be paid or transferred to or for

the account of Her Majesty's Exchequer in such manner as the Court thinks fit to order on the application of the Solicitor to the Treasury and shall be carried to and form part of the Consolidated Fund of the United Kingdom or in the discretion of the Court if the Company is insolvent and has been ordered to be wound up or a judicial factor has been appointed shall wholly or in part be paid or transferred to such judicial factor or to the liquidator or liquidators of the Company or be otherwise applied as part of the assets of the Company for the benefit of the creditors thereof Provided that until the deposit fund has been repaid to the depositors or has become otherwise applicable as herein-before mentioned any interest or dividends accruing thereon shall from time to time and as often as the same shall become payable be paid to or on the application of the depositors.

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40. If the railways are not completed within five years from the passing of this Act then on the expiration of that period the powers by this Act granted to the Company for making and completing the railways or otherwise in relation thereto shall cease except as to so much thereof as is then completed.

Period for
completion
of railways.

41. The Company may demand and take in respect of the use of the railways or any part thereof and of carriages and engines thereon and for the conveyance of traffic thereon and in respect of accommodation and services provided by the Company in connexion therewith or otherwise any tolls rates and charges not exceeding the tolls rates and charges which the Caledonian Railway Company are by the Caledonian Railway (Lanarkshire and Midlothian Branches) Act 1866 authorised to demand and take in respect of the use of the railway by that Act authorised to be made and of carriages and engines thereon and of accommodation and services provided by them in connexion therewith and for the purpose of this section sections twenty-seven to thirty-seven (both inclusive) of that Act shall be deemed to be incorporated with this Act and to apply to the railways.

Tolls.

42. Section twenty-four of the Railway and Canal Traffic Act 1888 and any enactment which may be passed in the present or any future session of Parliament extending or modifying that enactment shall with any necessary modifications apply to the Company in all respects as if it were one of the companies to which the provisions of the said enactment in terms applied Provided that the time within which the revised schedule of maximum rates and charges prescribed by the said section shall be submitted to the Board of

Application
of provisions
of Railway
and Canal
Traffic Act
1888 as to
revision of
rates.

A.D. 1890. Trade shall be three years from the date of the passing of this Act or such further time as the Board of Trade may permit.

Confirmation of scheduled agreement with the Caledonian Railway Company.

43. The agreement between the Caledonian Railway Company of the first part and John Grant Kinloch of Logie John Adamson of Careston Castle and Fitzroy Charles Fletcher of Fearn and Leatham Grange on behalf of the Company of the second part and set forth in the Second Schedule to this Act is hereby confirmed and made binding on the Caledonian Railway Company and the Company respectively.

Power to enter into traffic arrangements.

44. The Company on the one hand and the Caledonian Railway Company on the other hand may subject to the provisions of Part III. of the Railways Clauses Act 1863 as amended or varied by the Railway and Canal Traffic Acts 1873 and 1888 from time to time enter into alter or rescind agreements with respect to the following purposes or any of them (that is to say):—

The working use management and maintenance by the Caledonian Railway Company of the railways and works or any part or parts thereof :

The management regulation interchange collection transmission and delivery of traffic upon or coming from or destined for the railways of the contracting companies or either of them or any part thereof respectively :

The mode of construction of the railways and works or any part or parts thereof for the purposes of any working agreement made under the powers of this section and the supply and maintenance during the continuance of any such agreement of engines rolling stock and machinery necessary for the purposes of such agreement and the employment of officers and servants for the conduct of traffic :

The fixing collection payment appropriation apportionment and distribution of the tolls rates charges receipts and revenues levied taken or arising in respect of such traffic.

Joint committees.

45. Any joint committee which may be appointed by the Company and the Caledonian Railway Company for carrying into effect the purposes of any agreement that may be entered into under the powers contained in the next preceding section shall be composed of such equal number of their directors respectively as they may think proper and in the event of any difference arising between the members appointed by and for the said companies composing the said joint committee the same shall be determined by an arbitrator to be appointed by such committee or on the application of either of the companies by the Board of Trade.

43. During the continuance of any agreement to be entered into under the provisions of this Act for the working or use of the railways or any part thereof by the Caledonian Railway Company the railways of the Company and of the Caledonian Railway Company shall for the purposes of short distance tolls and charges be considered as one railway and in estimating the amount of tolls and charges in respect of traffic conveyed partly on the railways of the Company and partly on the railways of the Caledonian Railway Company for a less distance than three miles tolls and charges may be charged as for three miles only and in respect of passengers for every mile or fraction of a mile beyond three miles tolls and charges as for one mile only and in respect of animals and goods for every quarter of a mile or fraction of a quarter of a mile beyond three miles tolls and charges as for a quarter of a mile only and no other short distance charge shall be made for the conveyance of passengers animals or goods partly on the railways of the Company and partly on the railways of the Caledonian Railway Company.

A.D. 1890.

Tolls on traffic conveyed partly on the railways and partly on the Caledonian Railway.

47. The several facilities powers privileges and provisions by the Caledonian and Scottish North-eastern Railways Amalgamation Act 1866 granted secured and provided as regards east coast traffic as defined by that Act shall if and so long and so often as the railways authorised by this Act are worked by the Caledonian Company extend and apply to the said railways in all respects as if they had been railways in extension of or connected with the Scottish North-eastern Railway belonging to or leased by the Caledonian Company either solely or jointly with any other company but the running powers by the said Act of 1866 granted shall not extend to the said railways.

Facilities for East Coast Company.

48. Notwithstanding anything in this Act or in any Act or Acts incorporated herewith contained it shall be lawful for the Company in addition to the sum of one hundred and twenty thousand pounds (in this Act specified as the capital of the Company) to raise as part of such capital any further sum or sums not exceeding eight thousand four hundred pounds for the purpose of paying and thereout to pay interest at such rate not exceeding three pounds per centum per annum as the directors may determine to any shareholder on the amount from time to time paid up on the shares held by him from the respective times of such payments until the expiration of the time limited by this Act for the completion of the railways by this Act authorised or such less period as the directors may determine but subject always to the conditions herein-after stated (that is to say) :—

Power to pay interest out of capital during construction.

A.D. 1890.
—

- (a.) No such interest shall begin to accrue until the Company shall have obtained a certificate from the Board of Trade that two thirds at least of the share capital authorised by this Act has been actually issued and accepted and is held by shareholders who or whose executors administrators or assigns are legally liable for the same ;
- (b.) No such interest shall accrue in favour of any shareholder for any time during which any call on any of his shares is in arrear ;
- (c.) The amount so paid for interest shall not be deemed share capital in respect of which the borrowing powers of the Company may be exercised ;
- (d.) Notice that the Company has power so to pay interest out of capital shall be given in every prospectus advertisement or other document of the Company inviting subscriptions for shares and in every certificate of shares ;
- (e.) The half-yearly accounts of the Company shall show the amount of capital on which and the rate at which interest has been paid in pursuance of this section :

Save as herein-before set forth no interest or dividend shall be paid out of any share or loan capital which the Company are by this or any other Act authorised to raise to any shareholder on the amount of the calls made in respect of the shares held by him but nothing in this Act shall prevent the Company from paying to any shareholder such interest on money advanced by him beyond the amount of the calls actually made as is in conformity with the Companies Clauses Consolidation (Scotland) Act 1845.

Saving for
Postmaster-
General.

49. Nothing in the agreement set forth in the Second Schedule to this Act or in any agreement made under the authority of this Act shall affect the rights of Her Majesty's Postmaster-General under the Telegraph Act 1878 to place and maintain telegraphic lines in under upon along over or across the railways and works comprised in the undertaking of the Company and from time to time to alter such telegraphic lines and to enter upon the land and works comprised in such undertaking for the purposes in the Telegraph Act 1878 specified and the Postmaster-General shall be at liberty to exercise all the rights aforesaid notwithstanding that the undertaking of the Company is worked by the Caledonian Railway Company.

Deposits for
future Bills
not to be
paid out of
capital.

50. The Company shall not out of any money by this Act authorised to be raised pay or deposit any sum which by any standing order of either House of Parliament now or hereafter in

force may be required to be deposited in respect of any application to Parliament for the purpose of obtaining an Act authorising the Company to construct any other railway or to execute any other work or undertaking. A.D. 1890.

51. Nothing in this Act contained shall exempt the Company or their railways from the provisions of any general Act relating to railways or the better and more impartial audit of the accounts of railway companies now in force or which may hereafter pass during this or any future session of Parliament or from any future revision or alteration under the authority of Parliament of the maximum rates of fares and charges or of the rates for small parcels authorised by this Act. Provision as
to general
Railway
Acts.

52. All costs charges and expenses of and incident to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company. Costs of Act.

A.D. 1890.

The SCHEDULES referred to in the foregoing Act.

THE FIRST SCHEDULE.

Name of Limited Owner.
JOHN GRANT KINLOCH of Logie.

THE SECOND SCHEDULE.

AGREEMENT between THE CALEDONIAN RAILWAY COMPANY incorporated by Act of Parliament of the first part and JOHN GRANT KINLOCH of Logie JOHN ADAMSON of Careston Castle and FITZROY CHARLES FLETCHER of Fearn and Leatham Grange being three of the Promoters of and named in the Bill hereinafter mentioned specially authorised on this behalf by minute of the whole Promoters dated the nineteenth day of May one thousand eight hundred and ninety of the second part.

WHEREAS the second parties are promoting with others a Bill in Parliament for the purpose of forming themselves and others into a Company to be called the Forfar and Brechin Railway Company and for authority to construct a line of railway to be called the Forfar and Brechin Railway from Forfar to Brechin in the county of Forfar (hereinafter called "the railway") And whereas the promoters have agreed to enter into the agreement herein contained for the working of the said line of railway by the first parties in connexion with their system of railways in manner hereinafter provided Therefore the parties mutually agree with each other in manner following (that is to say):—

Article First—In the event of an Act being obtained and the capital being subscribed the second parties shall as soon as convenient thereafter purchase at their expense the necessary land and shall make construct and complete the railway as a single line with land and bridges for a double line and all stations station masters houses gate-keepers houses engine-sheds sidings signal cabins signals cranes turntables water tanks with water supply wires speaking telegraphic apparatus and Tyer's train tablet system of working (unless otherwise agreed) and other works and conveniences necessary for working the traffic of the railway all in a good sufficient and substantial manner and to the satisfaction of the chief engineer of the first parties for the time being or in case of any difference of opinion between him and the engineer of the second

parties respecting the same to the satisfaction of the Board of Trade on the application of either of the parties. A.D. 1890.

Article Second—Upon the construction completion and opening by the sanction of the Board of Trade of the railway and each part thereof the first parties shall in perpetuity but subject to the provision in article ten hereof work and manage the traffic upon and maintain the same and shall provide the locomotive power rolling stock and plant of every kind (except the furnishing and conveniences to be provided by the second parties mentioned in article first hereof) necessary for the working of the traffic from the date of the opening thereof for passenger traffic by authority of the Board of Trade as regards the working and management and from twelve months thereafter as regards the maintenance. The first parties shall work and manage the railway under the provisions of this agreement in a proper safe and convenient manner and so as fairly to develop the traffic to from and on the same. The first parties shall except as herein-after provided fix the tolls rates and charges for and in respect of all traffic using the railway or any part thereof.

Article Third—The first parties shall have the power save as herein-after mentioned in this article of selecting appointing suspending and dismissing all officers agents book-keepers booking and other clerks servants enginemen guards signalmen porters surfacemen and all others employed on and connected with the railway or required for keeping in their general office the accounts connected with the traffic of the same or employed in superintending or directing or actually engaged in conducting the said traffic and the said officers agents servants and others above mentioned shall be paid by the first parties and shall be exclusively under their control and the second parties shall have the selection appointment and control of and shall pay the secretary treasurer or other officers actually engaged and required by them in the management of the capital financial and directorial departments of their undertaking.

Article Fourth—The gross revenues of the second parties shall be held to consist of and include—

- (1.) All receipts in respect of local traffic (including mails) that is to say traffic which shall both arise and terminate on the railway.
- (2.) A mileage proportion of all receipts arising from through traffic including mails (that is to say traffic which passes over the railway or any part thereof and which likewise passes over the railways of the first parties or of any other company or any part thereof) corresponding to the distance for which such traffic is carried over the said several railways respectively after deduction from such receipts of the terminals on such traffic which shall belong and be paid to the companies other than the second parties respectively entitled thereto and also subject to deduction of the actual expense of cartage where incurred when included in the through rate.
- (3.) The terminals belonging to the second parties in respect of such through traffic subject to deduction of the actual expense of cartage where incurred when included in the terminal charge.
- (4.) Rents for the use of any property belonging to the second parties (including refreshment rooms bookstalls advertising and depôt ground) and all other revenues of the second parties (except the rents of surplus

A.D. 1890.

lands held by the second parties and transfer fees) but under deduction of all feu duties ground annuals rents and other periodical or annual payments as well as rates taxes and public and local burdens effeiring to such property.

- (5.) The first parties shall collect the said gross revenues and shall be entitled to retain fifty per centum thereof as their remuneration for maintaining the railway and working and managing the traffic thereon and collecting the said revenues and shall pay over the balance of fifty per centum to or for behoof of the second parties in manner herein-after provided.

Article Fifth—Out of the said balance the second parties shall pay—

- (1.) Government duty thereon ;
- (2.) All feu duties ground annuals rents and other periodical or annual payments if any payable in respect of any lands acquired and held on lease by them ;
- (3.) All compensation to tenants if any in respect of any lands acquired or injuriously affected by them so far as not chargeable against the capital of the second parties ;
- (4.) All rates taxes and public and local burdens of every kind payable in respect of the ownership of the railway ;
- (5.) All interest upon money borrowed by the second parties whether upon mortgage debenture stock or otherwise ; and
- (6.) The reasonable expense of the directorial and financial management of the business of the second parties including salaries of secretary treasurer or other officers who may be employed by them in these departments and such other charges and expenses as may be reasonably incurred on behalf of the second parties.

Article Sixth—If the nett revenue accruing to the second parties after deducting payments made by them under the next preceding article and all other charges payable by them is not sufficient to pay a dividend of three and one half per centum per annum on the paid up share capital of the second parties then the first parties shall out of the proportion of receipts accruing to them from traffic (including mails) arising or terminating on the railway and terminating or arising at any places on the Caledonian Railways north of Perth or Dundee both inclusive (but exclusive of the Dundee and Arbroath Joint Line) contribute such sum as may be necessary to make up that dividend so far as the proportion of the receipts accruing in each half year to the first parties from traffic passing over the said portion of their system or any part thereof from or to the railway or any part thereof less fifty per centum for working expenses shall suffice to pay such deficiency. The stations of the first parties at Forfar and Brechin shall be included in the above arrangement but the traffic from or to these stations shall be sent as consigned and the receipts accruing therefrom divided accordingly but the first parties shall be bound to contribute towards making up the aforesaid dividend of three and a half per centum to the extent of fifty per centum of the balance of the gross receipts after deduction of fifty per centum for working expenses from traffic carried to or from the said two stations respectively from or to places on the Caledonian Railways north of Perth or

[53 & 54 VICT.] *Forfar and Brechin Railway* [Ch. clxvi.]
Act, 1890.

Dundee as aforesaid In the event of the first parties having to make good any deficiency of revenue under this article the same shall be repaid to them with interest at the rate of three pounds per centum per annum out of such future surplus revenues after payment of such dividend of three and one half per centum as may accrue to the second parties and subject thereto such surplus revenues shall be divided equally between the first and second parties. A.D. 1890.

Article Seventh—Returns of all traffic falling within this agreement in so far as the second parties are interested therein shall be rendered by the first parties to the second parties monthly and the second parties may at their own expense employ officials to check the same and see that the traffic is duly accounted for And for this purpose the first parties will keep proper and sufficient accounts and vouchers which shall be open at all reasonable times for examination and transcription by such officials The revenues due to the second parties shall be paid over monthly to them or their treasurer or secretary or to such banker or other persons as they shall direct and appoint.

Article Eighth—The tolls rates and charges for local traffic shall if desired by the second parties be fixed and regulated from time to time by a joint committee composed of three directors of the first parties and an equal number of directors of the second parties The chairman of the committee to be appointed by the board of directors of the second parties but not to have a casting vote and in the event of any difference arising between the said sections of the committee the same shall be determined by arbitration as herein-after provided and such tolls rates and charges shall be so fixed as best to develop the traffic.

Article Ninth—The second parties shall if required by the first parties or the first parties may themselves in any subsequent session apply to Parliament or the Board of Trade for authority to make (at the expense of the first parties or as may be agreed upon between the parties) such alterations or extensions of the railway as the first parties shall deem to be necessary or desirable.

Article Tenth—This agreement shall be in perpetuity subject nevertheless to the unconditional determination thereof by the second parties at the end of ten years from the passing of the Act confirming this agreement upon six months previous notice in writing by the second parties to the first parties and on such determination the second parties shall repay to the first parties any advances under article sixth hereof.

Article Eleventh—This agreement is made subject to such alterations as Parliament may see fit to make thereon and shall be scheduled to and confirmed by the said Bill Should any alterations be made on this agreement by Parliament which in the opinion of Francis Henry Jeune one of Her Majesty's counsel whom failing Charles Alfred Cripps also one of Her Majesty's counsel is material thereto either of the parties may withdraw therefrom.

Article Twelfth—All questions which may arise between the parties hereto in relation to this agreement or to the import or meaning thereof or to the carrying out of the same shall be referred to arbitration under and in terms of the Railway Companies Arbitration Act 1859.

A.D. 1890.

Article Thirteenth—Upon the passing of the said Bill confirming this agreement all personal liability in reference thereto on the part of the individual promoters shall be at an end and the Company thereby incorporated shall thereupon become and be the second parties to this agreement in their place.

In witness whereof these presents consisting of this and the five preceding pages and in so far as not printed written by Malcolm Green clerk to James Reid writer to the signet Edinburgh are executed in duplicate as follows viz. they are subscribed by the parties of the second part as follows by the said John Adamson at Edinburgh on the second day of July in the year eighteen hundred and ninety before these witnesses the said James Reid and James Barlas his clerk by the said John Grant Kinloch at Kirriemuir on the third day of said month and year last mentioned before these witnesses Thomas Mackay Wilson solicitor Kirriemuir and George Wilkie Page at Logie Kirriemuir and by the said Fitzroy Charles Fletcher at London on the fourth day of said month and year last mentioned before these witnesses John Kennedy writer to the signet number thirty-eight Parliament Street Westminster London and Richard Guy Lindsay his clerk and by the Caledonian Railway Company being the parties of the first part as follows viz. they are subscribed by John Cowan and Hugh Brown two of the directors and Archibald Gibson secretary all of the said Company and sealed with the common or corporate seal of the said Company all at Glasgow on the seventh day of said month and year last mentioned before these witnesses John Johnstone Haining and John Tully Clarke both clerks in the secretary's office at Glasgow of the said Caledonian Railway Company.

J. J. HAINING Witness

J. TULLY CLARKE Witness

JOHN COWAN Director

HUGH BROWN Director

ARCH. GIBSON Secretary

L.S.

T. M. WILSON Solicitor Kirriemuir Witness

JOHN GRANT KINLOCH

GEORGE WILKIE PAGE Logie Kirriemuir Witness

JAMES REID Writer to the Signet Edinburgh

JOHN ADAMSON

Witness

JAMES BARLAS Law Clerk 2 Thistle Court

Edinburgh Witness

JOHN KENNEDY Writer to the Signet 38 Parlia-

FITZROY C. FLETCHER.

ment Street Westminster Witness

R. GUY LINDSAY 38 Parliament Street West-

minster Law Clerk Witness.

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